

110TH CONGRESS
1ST SESSION

H. R. 1422

To amend the Internal Revenue Code to provide a tax credit to individuals who enter into agreements to protect the habitats of endangered and threatened species, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2007

Mr. THOMPSON of California (for himself, Mr. YOUNG of Alaska, Mr. KIND, and Mr. RAMSTAD) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code to provide a tax credit to individuals who enter into agreements to protect the habitats of endangered and threatened species, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Endangered Species
5 Recovery Act of 2007”.

6 **SEC. 2. ENDANGERED SPECIES RECOVERY CREDIT.**

7 (a) IN GENERAL.—Subpart B of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 is amended by adding at the end the following new
2 section:

3 **“SEC. 30D. ENDANGERED SPECIES RECOVERY CREDIT.**

4 “(a) IN GENERAL.—In the case of an eligible tax-
5 payer, there shall be allowed as a credit against the tax
6 imposed by this chapter for the taxable year an amount
7 equal to the sum of—

8 “(1) the habitat protection easement credit,
9 plus

10 “(2) the habitat restoration credit.

11 “(b) LIMITATION.—

12 “(1) IN GENERAL.—The credit allowed under
13 subsection (a) for any eligible taxpayer for any tax-
14 able year shall not exceed the endangered species re-
15 covery credit limitation allocated to the eligible tax-
16 payer under subsection (f) for the calendar year in
17 which the taxpayer’s taxable year ends.

18 “(2) CARRYFORWARDS.—

19 “(A) IN GENERAL.—If the amount of the
20 credit allowable under subsection (a) for any
21 taxpayer for any taxable year exceeds the en-
22 dangered species recovery credit limitation allo-
23 cated under subsection (f) to such taxpayer for
24 the calendar year in which the taxpayer’s tax-
25 able year ends, such excess may be carried for-

ward to the next taxable year for which such taxpayer is allocated a portion of the endangered species recovery credit limitation.

“(B) CARRYFORWARD OF ALLOCATION AMOUNT.—If the amount of the endangered species recovery credit limitation allocated to an eligible taxpayer for any calendar year under subsection (f) exceeds the amount of the credit allowed to the taxpayer under subsection (a) for the taxable year ending in such calendar year, such excess may be carried forward to the next taxable year of the taxpayer. For purposes of this paragraph, any amount carried to another taxable year under this subparagraph shall be treated as allocated to the taxpayer for use in such taxable year under subsection (f).

“(c) ELIGIBLE TAXPAYER.—For purposes of this section—

“(1) IN GENERAL.—The term ‘eligible taxpayer’ means—

“(A) a taxpayer who—

“(i) owns real property which contains the habitat of a qualified species, and

“(ii) enters into a qualified perpetual habitat protection agreement, a qualified

1 30-year habitat protection agreement, or a
2 qualified habitat protection agreement with
3 the appropriate Secretary with respect to
4 such real property, and

5 “(B) any other taxpayer who—

6 “(i) is a party to a qualified perpetual
7 habitat protection agreement, a qualified
8 30-year habitat protection agreement, or a
9 qualified habitat protection agreement, and

10 “(ii) as part of any such agreement,
11 agrees to assume responsibility for costs
12 paid or incurred as a result of imple-
13 menting such agreement.

14 “(2) QUALIFIED PERPETUAL HABITAT PROTEC-
15 TION AGREEMENT.—The term ‘qualified perpetual
16 habitat protection agreement’ means an agree-
17 ment—

18 “(A) under which the taxpayer grants to
19 the appropriate Secretary, the Secretary of Ag-
20 riculture, the Secretary of Defense, or a State
21 an easement in perpetuity for the protection of
22 the habitat of a qualified species, and

23 “(B) which meets the requirements of
24 paragraph (5).

1 “(3) QUALIFIED 30-YEAR HABITAT PROTECTION
2 AGREEMENT.—The term ‘qualified 30-year habitat
3 protection agreement’ means an agreement—

4 “(A) under which the taxpayer grants to
5 the appropriate Secretary, the Secretary of Ag-
6 riculture, the Secretary of Defense, or a State
7 an easement for a period of not less than 30
8 years and less than perpetuity for the protec-
9 tion of the habitat of a qualified species, and

10 “(B) which meets the requirements of
11 paragraph (5).

12 “(4) QUALIFIED HABITAT PROTECTION AGREE-
13 MENT.—The term ‘qualified habitat protection
14 agreement’ means an agreement—

15 “(A) under which the taxpayer enters into
16 an agreement with the appropriate Secretary,
17 the Secretary of Agriculture, the Secretary of
18 Defense, or a State to protect the habitat of a
19 qualified species for a specified period of time,
20 and

21 “(B) which meets the requirements of
22 paragraph (5).

23 “(5) REQUIREMENTS.—An agreement meets
24 the requirements of this paragraph if—

1 “(A) the agreement is consistent with any
2 recovery plan which is applicable and which has
3 been approved for a qualified species under sec-
4 tion 4 of the Endangered Species Act of 1973,

5 “(B) the appropriate Secretary and the eli-
6 gible taxpayer enter into a habitat management
7 plan designed to—

8 “(i) restore or enhance the habitat of
9 a qualified species, or

10 “(ii) reduce threats to a qualified spe-
11 cies through the management of the habi-
12 tat, and

13 “(C) the appropriate Secretary ensures
14 that the eligible taxpayer is provided with tech-
15 nical assistance in carrying out the duties of the
16 taxpayer under the terms of the agreement.

17 “(d) HABITAT PROTECTION EASEMENT CREDIT.—

18 “(1) IN GENERAL.—For purposes of subsection
19 (a)(1), the habitat protection easement credit for
20 any taxable year is an amount equal to—

21 “(A) in the case of an eligible taxpayer
22 who has entered into a qualified perpetual habi-
23 tat protection agreement during such taxable
24 year, 100 percent of the excess (if any) of—

1 “(i) the fair market value of the real
 2 property with respect to which the quali-
 3 fied perpetual habitat protection agreement
 4 is made, determined on the day before
 5 such agreement is entered into, over

6 “(ii) the fair market value of such
 7 property, determined on the day after such
 8 agreement is entered into,

9 “(B) in the case of an eligible taxpayer
 10 who has entered into a qualified 30-year habitat
 11 protection agreement during such taxable year,
 12 75 percent of such excess, and

13 “(C) in the case of any other eligible tax-
 14 payer, zero.

15 “(2) REDUCTION FOR AMOUNT RECEIVED FOR
 16 EASEMENT.—The credit allowed under subsection
 17 (a)(1) shall be reduced by any amount received by
 18 the taxpayer in connection with the easement.

19 “(3) LIMITATION BASED ON AMOUNT OF
 20 TAX.—The credit allowed under subsection (a)(1) for
 21 any taxable year shall not exceed the sum of—

22 “(A) the taxpayer’s regular tax liability for
 23 the taxable year reduced by the sum of the
 24 credits allowable under subpart A and sections
 25 27, 30, 30B, and 30C, and

1 “(B) the tax imposed by section 55(a) for
2 the taxable year.

3 “(4) CARRYFORWARD OF UNUSED CREDIT.—If
4 the credit allowable under subsection (a)(1) for any
5 taxable year exceeds the limitation imposed by para-
6 graph (3) for such taxable year, such excess shall be
7 carried to the succeeding taxable year and added to
8 the credit allowable under subsection (a)(1) for such
9 succeeding taxable year.

10 “(5) QUALIFIED APPRAISALS REQUIRED.—No
11 amount shall be taken into account under this sub-
12 section unless the eligible taxpayer includes with the
13 taxpayer’s return for the taxable year a qualified ap-
14 praisal (within the meaning of section
15 170(f)(11)(E)) of the real property.

16 “(e) HABITAT RESTORATION CREDIT.—

17 “(1) IN GENERAL.—For purposes of subsection
18 (a)(2), the habitat restoration credit for any taxable
19 year shall be an amount equal to—

20 “(A) in the case of a qualified perpetual
21 habitat protection agreement, 100 percent of
22 the costs paid or incurred by an eligible tax-
23 payer during such taxable year pursuant to the
24 habitat management plan entered into under
25 such agreement,

1 “(B) in the case of a qualified 30-year
2 habitat protection agreement, 75 percent of the
3 costs paid or incurred by an eligible taxpayer
4 during such taxable year pursuant to the habi-
5 tat management plan entered into under such
6 agreement, and

7 “(C) in the case of a qualified habitat pro-
8 tection agreement, 50 percent of the costs paid
9 or incurred by an eligible taxpayer during such
10 taxable year pursuant to the habitat manage-
11 ment plan entered into under such agreement.

12 “(2) LIMITATION BASED ON AMOUNT OF
13 TAX.—The credit allowed under subsection (a)(2) for
14 any taxable year shall not exceed the excess (if any)
15 of—

16 “(A) the regular tax liability for the tax-
17 able year reduced by the sum of the credits al-
18 lowable under subpart A and sections 27, 30,
19 30B, and 30C, over

20 “(B) the tentative minimum tax for the
21 taxable year.

22 “(3) CARRYFORWARD OF UNUSED CREDIT.—If
23 the credit allowable under subsection (a)(2) for any
24 taxable year exceeds the limitation imposed by para-
25 graph (2) for such taxable year, such excess shall be

1 carried to the succeeding taxable year and added to
2 the credit allowable under subsection (a)(2) for such
3 succeeding taxable year.

4 “(4) SPECIAL RULES.—

5 “(A) CERTAIN COSTS NOT INCLUDED.—No
6 credit shall be allowed under subsection (a)(2)
7 for any cost which is paid or incurred by a tax-
8 payer to comply with any requirement of a Fed-
9 eral, State, or local government.

10 “(B) SUBSIDIZED FINANCING.—For pur-
11 poses of paragraph (1), the amount of costs
12 paid or incurred by an eligible taxpayer pursu-
13 ant to any agreement described in subsection
14 (c) shall be reduced by the amount of any fi-
15 nancing provided under any Federal or State
16 program a principal purpose of which is to sub-
17 sidize financing for the conservation of the
18 habitat of a qualified species.

19 “(f) ENDANGERED SPECIES RECOVERY CREDIT LIM-
20 ITATION.—

21 “(1) IN GENERAL.—There is an endangered
22 species recovery credit limitation for each calendar
23 year. Such limitation is —

24 “(A) for 2008, 2009, 2010, 2011, and
25 2012—

1 “(i) \$300,000,000 with respect to
2 qualified perpetual habitat protection
3 agreements,

4 “(ii) \$60,000,000 with respect to
5 qualified 30-year habitat protection agree-
6 ments, and

7 “(iii) \$40,000,000 with respect to
8 qualified habitat protection agreements,
9 and

10 “(B) except as provided in paragraph (3),
11 zero thereafter.

12 “(2) ALLOCATION OF LIMITATION.—

13 “(A) IN GENERAL.—The Secretary, in con-
14 sultation with the Secretary of the Interior and
15 the Secretary of Commerce, shall allocate the
16 endangered species recovery credit limitation to
17 eligible taxpayers.

18 “(B) ESTABLISHMENT OF ALLOCATION
19 PROGRAM.—Not later than 180 days after the
20 date of the enactment of this Act, the Secretary
21 of the Treasury, in consultation with the Sec-
22 retary of the Interior and the Secretary of
23 Commerce, shall, by regulation, establish a pro-
24 gram to process applications from eligible tax-
25 payers and to determine how to best allocate

1 the credit limitation under subparagraph (A),
2 taking into account the considerations described
3 in subparagraph (C).

4 “(C) CONSIDERATIONS.—In accepting ap-
5 plications to make allocations to eligible tax-
6 payers under this section, priority shall be given
7 to taxpayers with agreements—

8 “(i) relating to habitats that will sig-
9 nificantly increase the likelihood of recov-
10 ering and delisting a species as an endan-
11 gered species or a threatened species (as
12 defined under section 2 of the Endangered
13 Species Act of 1973),

14 “(ii) that are cost-effective and maxi-
15 mize the benefits to a qualified species per
16 dollar expended,

17 “(iii) relating to habitats of species
18 which have a federally approved recovery
19 plan pursuant to section 4 of the Endan-
20 gered Species Act of 1973,

21 “(iv) relating to habitats with the po-
22 tential to contribute significantly to the im-
23 provement of the status of a qualified spe-
24 cies,

1 “(v) relating to habitats with the po-
2 tential to contribute significantly to the
3 eradication or control of invasive species
4 that are imperiling a qualified species,

5 “(vi) with habitat management plans
6 that will manage multiple qualified species,

7 “(vii) with habitat management plans
8 that will create adjacent or proximate habi-
9 tat for the recovery of a qualified species,

10 “(viii) relating to habitats for quali-
11 fied species with an urgent need for protec-
12 tion,

13 “(ix) with habitat management plans
14 that assist in preventing the listing of a
15 species as endangered or threatened under
16 the Endangered Species Act of 1973 or a
17 similar State law,

18 “(x) with habitat management plans
19 that may resolve conflicts between the pro-
20 tection of qualified species and otherwise
21 lawful human activities, and

22 “(xi) with habitat management plans
23 that may resolve conflicts between the pro-
24 tection of a qualified species and military
25 training or other military operations.

1 “(3) CARRYOVER OF UNUSED LIMITATION.—If
2 for any calendar year the limitation under paragraph
3 (1) (after the application of this paragraph) exceeds
4 the amount allocated to all eligible taxpayers for
5 such calendar year, the limitation amount for the
6 following calendar year shall be increased by the
7 amount of such excess.

8 “(g) OTHER DEFINITIONS AND SPECIAL RULES.—

9 “(1) APPROPRIATE SECRETARY.—The term ‘ap-
10 propriate Secretary’ has the meaning given to the
11 term ‘Secretary’ under section 3(15) of the Endan-
12 gered Species Act of 1973.

13 “(2) HABITAT MANAGEMENT PLAN.—The term
14 ‘habitat management plan’ means, with respect to
15 any habitat, a plan which—

16 “(A) identifies one or more qualified spe-
17 cies to which the plan applies,

18 “(B) describes the management practices
19 to be undertaken by the taxpayer,

20 “(C) describes the technical assistance to
21 be provided to the taxpayer and identifies the
22 entity that will provide such assistance,

23 “(D) provides a schedule of deadlines for
24 undertaking such management practices, and

1 “(E) requires monitoring of the manage-
2 ment practices and the status of the qualified
3 species.

4 “(3) QUALIFIED SPECIES.—The term ‘qualified
5 species’ means—

6 “(A) any species listed as an endangered
7 species or threatened species under the Endan-
8 gered Species Act of 1973, or

9 “(B) any species for which a finding has
10 been made under section 4(b)(3) of Endangered
11 Species Act of 1973 that listing under such Act
12 may be warranted.

13 “(4) TAKING.—The term ‘taking’ has the
14 meaning given to such term under the Endangered
15 Species Act of 1973.

16 “(5) REDUCTION IN BASIS.—For purposes of
17 this subtitle, the basis of any property for which a
18 credit is allowable under subsection (a)(1) shall be
19 reduced by the amount of the credit so allowed.

20 “(6) DENIAL OF DOUBLE BENEFIT.—No deduc-
21 tion shall be allowed under this chapter for any
22 amount with respect to which a credit is allowed
23 under subsection (a).

24 “(7) CERTIFICATION.—No credit shall be al-
25 lowed under subsection (a) unless the appropriate

1 Secretary certifies that any agreement described in
2 subsection (c) which is entered into by an eligible
3 taxpayer will contribute to the recovery of a qualified
4 species.

5 “(8) REQUEST FOR AUTHORIZATION OF INCI-
6 DENTAL TAKINGS.—The Secretary shall request the
7 appropriate Secretary to consider whether to author-
8 ize under the Endangered Species Act of 1973
9 takings by an eligible taxpayer of a qualified species
10 to which an agreement described in subsection (c)
11 relates if the takings are incidental to—

12 “(A) the restoration, enhancement, or
13 management of the habitat pursuant to the
14 habitat management plan under the agreement,
15 or

16 “(B) the use of the property to which the
17 agreement pertains at any time after the expi-
18 ration of the easement or the specified period
19 described in subsection (c)(4)(A), but only if
20 such use will leave the qualified species at least
21 as well off on the property as it was before the
22 agreement was made.

23 “(9) RECAPTURE.—The Secretary shall, by reg-
24 ulations, provide for recapturing the benefit under
25 any credit allowable under subsection (a) if the Sec-

1 retary, in consultation with the appropriate Sec-
2 retary, determines that—

3 “(A) the eligible taxpayer has failed to
4 carry out the duties of the taxpayer under the
5 terms of a qualified perpetual habitat protection
6 agreement, a qualified 30-year habitat protec-
7 tion agreement, or a qualified habitat protection
8 agreement, and

9 “(B) there are no other available means to
10 remediate such failure.”.

11 (b) GAO STUDY.—

12 (1) IN GENERAL.—The Comptroller General of
13 the United States shall undertake a study on the ef-
14 fectiveness of the endangered species recovery credit
15 under section 30D of the Internal Revenue Code of
16 1986 (as added by this Act).

17 (2) ISSUES TO BE STUDIED.—The study under
18 paragraph (1) shall—

19 (A) evaluate—

20 (i) the effectiveness of the endangered
21 species recovery credit in encouraging
22 landowners to enter into agreements for
23 the protection of the habitats of endan-
24 gered and threatened species, and

1 (ii) the degree to which such agree-
2 ments are effective in—

3 (I) preserving the habitats of en-
4 dangered and threatened species, and

5 (II) assisting in the recovery of
6 such species, and

7 (B) include recommendations for improv-
8 ing the effectiveness of endangered species re-
9 covery credit.

10 (3) REPORTS.—

11 (A) INTERIM REPORT.—Not later than 3
12 years after the date of the enactment of this
13 Act, the Comptroller General of the United
14 States shall submit to Congress an interim re-
15 port on the study conducted under paragraph
16 (1).

17 (B) FINAL REPORT.—Not later than 5
18 years after the date of the enactment of this
19 Act, the Comptroller General of the United
20 States shall submit to Congress a final report
21 on the study conducted under paragraph (1).

22 (c) CONFORMING AMENDMENTS.—

23 (1) Section 1016(a) of the Internal Revenue
24 Code of 1986 is amended by striking “and” at the
25 end of paragraph (36), by striking the period at the

1 end of paragraph (37) and inserting “, and”, and by
 2 inserting after paragraph (37) the following new
 3 paragraph:

4 “(38) to the extent provided in section
 5 30D(g)(5).”.

6 (2) The table of sections for subpart B of part
 7 IV of subchapter A of chapter 1 of such Code is
 8 amended by inserting after the item relating to sec-
 9 tion 30C the following new item:

“Sec. 30D. Endangered species recovery credit.”.

10 (d) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to taxable years beginning after
 12 December 31, 2007.

13 **SEC. 3. DEDUCTION FOR ENDANGERED SPECIES RECOV-**
 14 **ERY EXPENDITURES.**

15 (a) DEDUCTION FOR ENDANGERED SPECIES RECOV-
 16 ERY EXPENDITURES.—

17 (1) IN GENERAL.—Paragraph (1) of section
 18 175(c) of the Internal Revenue Code of 1986 (relat-
 19 ing to definitions) is amended by inserting after the
 20 first sentence the following new sentence: “Such
 21 term shall include expenditures paid or incurred for
 22 the purpose of achieving specific actions rec-
 23 ommended in recovery plans approved pursuant to
 24 the Endangered Species Act of 1973.”.

25 (2) CONFORMING AMENDMENTS.—

1 (A) Section 175 of such Code is amended
 2 by inserting “, or for endangered species recov-
 3 ery” after “prevention of erosion of land used
 4 in farming” each place it appears in subsections
 5 (a) and (c).

6 (B) The heading of section 175 of such
 7 Code is amended by inserting “; **ENDAN-
 8 GERED SPECIES RECOVERY EXPENDI-
 9 TURES**” before the period.

10 (C) The item relating to section 175 in the
 11 table of sections for part VI of subchapter B of
 12 chapter 1 of such Code is amended by inserting
 13 “; endangered species recovery expenditures”
 14 before the period.

15 (b) LIMITATIONS.—Paragraph (3) of section 175(c)
 16 of the Internal Revenue Code of 1986 (relating to addi-
 17 tional limitations) is amended—

18 (1) in the heading, by inserting “OR ENDAN-
 19 GERED SPECIES RECOVERY PLAN” after “CONSERVA-
 20 TION PLAN”, and

21 (2) in subparagraph (A)(i), by inserting “or the
 22 recovery plan approved pursuant to the Endangered
 23 Species Act of 1973” after “Department of Agri-
 24 culture”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to expenditures paid or incurred
 3 after the date of the enactment of this Act.

4 **SEC. 4. EXCLUSION FOR COST SHARING PAYMENTS UNDER**
 5 **THE PARTNERS FOR FISH AND WILDLIFE ACT**
 6 **AND CERTAIN OTHER PROGRAMS AUTHOR-**
 7 **IZED BY THE FISH AND WILDLIFE ACT OF**
 8 **1956.**

9 (a) IN GENERAL.—Subsection (a) of section 126 of
 10 the Internal Revenue Code of 1986 (relating to certain
 11 cost-sharing payments) is amended by redesignating para-
 12 graph (10) as paragraph (12) and by inserting after para-
 13 graph (9) the following new paragraphs:

14 “(10) The Partners for Fish and Wildlife Pro-
 15 gram authorized by the Partners for Fish and Wild-
 16 life Act.

17 “(11) The Landowner Incentive Program, the
 18 State Wildlife Grants Program, and the Private
 19 Stewardship Grants Program authorized by the Fish
 20 and Wildlife Act of 1956.”.

21 (b) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to payments received after the date
 23 of the enactment of this Act.

